murrer to the plea was sustained. The defendants appealed. *Held*, that the information be dismissed. *People ex. rel. Livers et al.* v. *Hanson et al.*, 125 N. E. 268 (Ill.).

For a discussion of this case, see NOTES, p. 848, *supra*.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHT OF ACTION FOR TORT CAUSING PERSONAL AND PROPERTY DAMAGE. — The defendant so negligently discharged its duties under a contract to maintain the bankrupt's credit as a trader during his absence in the army that his estate was forced into bankruptcy and its assets depleted. The bankrupt and the trustee join as parties plaintiff, the former claiming for damage to his credit and business reputation, and the latter claiming for injury to the estate. *Held*, that both may recover. *Wilson & Another* v. *United Counties Bank, Ltd.*, [1920] A. C. 102 (House of Lords).

It is well settled that a right of action for personal injuries remains in the bankrupt, while one for property damage vests in the trustee. *Sibley* v. *Nason*, 196 Mass. 125, 81 N. E. 887. See BANKRUPTCY ACT 1898, §§ 70 *a* 5, 6. But where the same wrongful act causes both personal and property damage, the relative rights of the bankrupt and the trustee are as yet not well defined. An earlier English case took the view that the right should be confined to the party representing the interest chiefly damaged. *Rose* v. *Buckett*, [1901] 2 K. B. D. 449. See 15 HARV. L. REV. 229. Theoretically unsatisfactory, this is practically inapplicable where each interest has sustained material injury. In justice, both should be compensated, but the difficulty lies in apportioning the cause of action occasioned by the single tortious act. It would seem that the Bankruptcy Act established a right in the trustee, for in him are vested the bankrupt's "rights of action arising . . . from injury to his property." BANKRUPTCY ACT, §§ 70*a*, 6. If so, the bankrupt must proceed on the theory that the action is divisible to recover for the personal injury. Such a dual cause of action has been held divisible even outside of bankruptcy. *Brunsden* v. *Humphrey*, 14 Q. B. D. 141; *Reilly* v. *Sicilian, etc. Paving Co.*, 170 N. Y. 40, 62 N. E. 772. But see *Doran* v. *Cohen*, 147 Mass. 342, 17 N. E. 647; *Von Fragstein* v. *Windler*, 2 Mo. Ap. 598. And various *dicta* of the English courts in bankruptcy cases foreshadowed the decision in the principal case. *Rogers* v. *Spence*, 12 Cl. & F. 700, 720; *Beckham* v. *Drake*, 2 H. L. C. 578, 628. See also *Darley, etc. Co.* v. *Mitchell*, 11 A. C. 127, 144. Even though, in general, such a cause of action should be held indivisible, it would seem practically desirable to allow an apportionment between the bankrupt and his trustee under the special circumstances of bankruptcy. It is to be hoped that the American courts, as yet undecided, will follow the principal case, despite their varying views on the divisibility of actions. There are cases pointing the other way, however. See *Epstein* v. *Handverker*, 29 Okla. 337, 116 Pac. 789; *Remmers* v. *Remmers*, 217 Mo. 541, 117 S. W. 1117; *Sibley* v. *Nason*, *supra*.

BANKRUPTCY — PROPERTY PASSING TO THE TRUSTEE IN BANKRUPTCY — RIGHT TO RECOVER SECURITIES PLEDGED FOR A USURIOUS LOAN. — The defendant loaned money to a borrower at a usurious rate of interest. A statute permitted the borrower an action for the recovery of the securities without any tender of the loan. (1909 LAWS OF NEW YORK, c. 25, § 377.) The plaintiff, receiver in bankruptcy of the borrower, claims the same right. *Held*, that the defendant have judgment. *Rice* v. *Schneck*, 179 N. Y. Supp. 335.

The Bankruptcy Act provides that the assets of the bankrupt, including rights of action arising from contract and detention and injuries to property, shall pass to the trustee of the estate. BANKRUPTCY ACT OF 1898, § 70 *a* (6). Actions for fraud in inducing a sale or an acceptance of a contract will pass,

under this section. *In re Harper*, 175 Fed. 412; *In re Gay*, 182 Fed. 260. So, of an action for malicious attachment of property: *Hansen* v. *Wyman & Partridge Co.*, 105 Minn. 491, 117 N. W. 926. The right to revest one's self with property, held as security for a usurious loan, seems equally to be in protection of property. The principal case, however, took the view that the right under the usury statute was personal to the borrower, following previous, decisions. *Wheelock* v. *Lee*, 64 N. Y. 242; *In re Fishel*, 198 Fed. 464. However the trustee in bankruptcy of the borrower may to some extent avail himself of the usury statutes. He may use the defense of usury to defeat a claim against the estate. *In re Kellogg*, 121 Fed. 333; *Broach* v. *Mullis*, 228 Fed. 551. He may recover usurious interest paid. *Reed* v. *National Bank*, 155 Fed. 233; *Wheelock* v. *Lee*, *supra*. He may recover a penalty to which the lender is liable. *Tamplin* v. *Wentworth*, 99 Mass. 63; *First National Bank* v. *Lasater*, 196 U. S. 115. Furthermore, the property in the pledge will pass to the trustee subject only to the creditor's lien. *Rode & Horn* v. *Phipps*, 195 Fed. 414. And normally a creditor would have no standing to rely on a lien obtained by a usurious contract. *Thompson* v. *Van Vechten*, 27 N. Y. 568; *Vickery* v. *Dickson*, 35 Barb. 96. The result of the principal case is undesirable since it enables the bankrupt, by pledging property to a usurious creditor, to prevent it from going to his legitimate creditors unless the trustee in bankruptcy pays the usurious creditor in full.

CONFLICT OF LAWS — CONCURRENT JURISDICTION — RULE OF FEDERAL COURTS AS TO BURDEN OF PROOF APPLIED IN AN ACTION IN A STATE COURT UNDER A FEDERAL STATUTE. — In an action in a state court based on the federal Employers' Liability Act, the question was presented whether the rule of the state court or that of the federal court regarding the burden of proof on the issue of assumption of risk should govern (35 STAT. 65). *Held*, that the federal rule should be applied. *Crugley* v. *Grand Trunk Ry. Co.*, 108 Atl. 293 (N. H.).

State courts of general jurisdiction must take cognizance of an action to enforce a right of recovery arising under the federal Employers' Liability Act. *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1. In such an action in a state court, the decisions of the federal courts as to the construction of the statute are binding. *Southern Ry. Co.* v. *Gray*, 241 U. S. 333. As to matters of procedure, the law of the forum governs. *Ches. & Ohio Ry. Co.* v. *Kelley's Adm'x*, 161 Ky. 655, 171 S. W. 185; *Bombolis* v. *Minn., etc. R. Co.*, 128 Minn. 112, 150 N. W. 385; *St. Louis, etc. R. Co.* v. *Brown*, 45 Okla. 143, 144 Pac. 1075. The question of who has the burden of proof of an issue is ordinarily one of procedure. *Duggan* v. *Bay State St. Ry. Co.*, 230 Mass. 370, 119 N. E. 757; *Sackheim* v. *Pigueron*, 215 N. Y. 62, 109 N. E. 109; *So. Ind. Ry. Co.* v. *Peyton*, 157 Ind. 690, 61 N. E. 722. But a statute which creates a cause of action may impose limitations on it which become a part of the substantive right, although apart from the statute they would be remedial only. *Phillips* v. *Grand Trunk Ry.*, 236 U. S. 662; *Partee* v. *St. Louis, etc. Co.*, 204 Fed. 970; *Wheatland* v. *Boston*, 202 Mass. 258, 88 N. E. 769. The United States Supreme Court has ruled that the statute in question makes the burden of proof a part of the substantive right. *Central Vt. R. R.* v. *White*, 238 U. S. 507. Since the state court is bound by this construction of the statute, the decision in the principal case follows logically.

CONSTITUTIONAL LAW — DUE PROCESS — REGULATION OF PRICES. — The Montana legislature passed an act giving a commission power to supervise the charges made for all commodities sold within the state, and to establish maximum prices or a reasonable margin of profit; the act made provision for court review of any prices claimed to be unreasonable or unjustly discriminatory.